

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal ch. NR 545; to amend ss. 500.03(19), 500.03(140), 502.05(3)(g), 502.06(2)(ar), 502.06(4)(e), 502.07(2f), 502.08(2)(b), 502.08(2) (f) and NR 544.01 to 544.15; to repeal and recreate s. NR 544.16; and to create 500.03(140)(note), 502.06(4)(em) 502.08(2)(fg) and 502.08(2)(fr) relating to recycling.

WA-58-04

Analysis prepared by the Department of Natural Resources

1. Statutes Interpreted

ss. 287.11, 287.09(2)(a), 287.27, 289.35 and 289.55, Stats.

2. Statutory Authority

ss. 289.05(1), 289.06 (1), 289.07 (1) and 287.03 (1) and (2), Stats.

3. Explanation of Agency Authority to Promulgate the Proposed Rule under the Statutory Authority

In ss. 289.05, 289.06, 289.07, 287.03, Stats., the department has the duty and authority to promulgate rules implementing ch NR 500, 502, 544, and 545, and to conduct or direct investigations and studies related to solid waste disposal.

4. Related Statute or Rule

None

5. Plain Language Analysis of the Proposed Rule Revisions

The intent of the proposed revisions in rules related to recycling under the NR 500 series is to 1) eliminate obsolete language and references; 2) confirm the original intent and scope of rules related to recycling through clarification of rule language and definitions; and 3) update certain provisions to reflect changes in recycling methods and technology.

NR 545, which addresses approval of Out-of-State Units with an effective recycling program, is repealed in its entirety. Recycling statutes in effect prior to 1997 required out-of-state local governments to have a Department approved effective recycling program in order to dispose of solid waste in Wisconsin landfills. In 1999, federal courts determined that Wisconsin's scheme of regulating the inflow of out-of-state recyclable wastes violated the Interstate Commerce Clause of the U.S. Constitution. Therefore the requirements specified in NR 545 for approving out-of-state recycling programs are obsolete.

The proposed revisions to NR 544, Effective Recycling Programs, (commonly referred to as the Recycling Rule) are the result of a six-month stakeholder process during which the Department convened five regional listening sessions and worked closely with the joint stakeholder/Department staff NR 544 Rule Revisions Workgroup. The objective of this process was to eliminate references to obsolete sections of statutes and code as well as to dates that are long passed, and to propose revisions to achieve the following:

- 1) confirm the regulatory authority of responsible units to require recycling at all locations in Wisconsin,
- 2) address changes in recycling collection and processing systems, and

- 3) ensure that materials recovery facilities (MRF), recycling transfer facilities and recycling processing facilities operate in manner to protect human health and the environment.

Proposed revisions to definitions NR 500, General Solid Waste Management Requirements, are added to ensure consistency with statutory definition and intent.

Revisions are proposed to NR 502, Solid Waste Storage, Transportation, Transfer, Incineration, Air Curtain Destructors, Processing, Wood Burning, Composting and Municipal Solid Waste Combustors, to ensure that recycling facilities are maintained and operated in a manner so as to protect the environment and human health. In addition, it is proposed to reestablish the requirement for waste tire processors to obtain a plan of operation approval from the Department. This requirement was inadvertently removed in 1995 as a result of rule changes that applied across the board for other materials subject to landfill bans under s. 287.07 (3) and (4), Stats. Finally, language is added to the general operational requirements for operators of municipal solid waste collection and transportation services, including recycling services. The additional language requires these service providers to comply with, and inform their clients of, recycling requirements under state law and local ordinance. This requirement is considered necessary to ensure a level playing field among all service providers; currently those that do comply with the intent of state and local recycling laws find themselves at a competitive disadvantage compared to those that do not abide by the intent of the law.

6. Summary of and Preliminary Comparison of Existing or Proposed Federal Regulations that is Intended to Address the Activity to be Regulated by the Proposed Rule

No federal rules address requirements of municipal recycling programs, or the manner in which recycling services and facilities are operated and maintained.

7. Comparison of Similar Rules in Adjacent States (MN, IA, IL and MI)

Recycling requirements in adjacent states differ from Wisconsin's in that responsibility for recycling the materials subject to the landfill and incineration bans under s. 287.07 (1m) to (4), Stats., is delegated to local units of government referred to as responsible units. The requirements in neighboring states are as follows:

Michigan: In 2004, Michigan clarified and expanded the list of items prohibited from landfill disposal. Items prohibited from disposal include medical waste, used beverage containers as defined in the Initiated Law of 1976, as amended (Deposit Law), whole motor vehicle tires, used oil, lead acid battery, low-level radioactive waste, hazardous waste, yard clippings, liquid waste, sewage, polychlorinated biphenyls (PCBs), and asbestos. Michigan does not require local governments to implement recycling programs. To ensure compliance with the bans, inspections are conducted at Michigan landfills.

Minnesota: Minnesota has adopted a statewide recycling goal (50% for the metro area, and 35% for all other areas) and has established a list of materials that can be recycled to meet this goal. Counties in the 7-County Metro Area are required by state law to process waste prior to disposal (or certify that excess waste exceeded processing capacity and therefore must be landfilled). Metro Area Landfills, however, will accept unprocessed waste from other counties. Responsibility in Minnesota for ensuring recycling requirements is delegated to the counties or to regional solid waste management districts.

Illinois: Illinois has required each county to create a solid waste management plan that includes planning for a 25% recycling rate, but does not currently enforce meeting that rate. The Department of Commerce and Economic Opportunity provides grants on a competitive basis to municipalities, businesses and other organizations to help build the recycling infrastructure. Illinois bans landscape waste, lead-acid batteries, whole tires, liquid motor oil, and unprocessed white goods from landfills. Incineration is not banned in Illinois but there are no MSW incinerators currently in operation. MRF's are not current regulated by the Illinois EPA, however they do have proposed regulations out for public comment.

Iowa: Iowa has a landfill ban on lead-acid batteries, yard waste, and whole tires. Each local government is responsible for providing a local recycling program for glass, plastic, paper and metal. Communities that are not achieving 25% diversion from the landfill are required to implement a unit-based pricing ordinance. Iowa does not permit material recovery facilities, but does require compliance with certain operational standards to protect human health and the environment and has closure requirements.

8. Summary of the factual data and analysis methodologies that the agency used in support of the proposed rules and how any related findings support the regulatory approach chosen for the proposed rule.

The Department worked with representatives of local government, responsible units, and waste management services to identify areas of NR 544 that would benefit from revision to improve the effectiveness of local recycling programs. The proposal to amend NR 502 requiring that solid waste service providers (haulers) notify their business clients of recycling requirements stems from numerous reports to the Department by the public that some haulers are incorrectly informing their business clients that recycling of “banned” materials is not necessary. Haulers that are doing the right thing by informing their clients claim that this puts them at a disadvantage. Including language making notification part of the C&T license requirements will even the playing field for all haulers.

9. Any analysis and supporting documentation that the agency used in support of the agency's determination of the proposed rule's effect on small business under s. 227.114, Stats., or that was used when the agency prepared an economic impact report.

The intent of all proposed revisions, with the exception of technical edits, is to reaffirm the original intent of the recycling rules and to add specific language to ensure that recycling facilities are operated in a manner to protect the environment and human health. The intent of any new or expanded requirements is to clarify original intent and is not expected to impact small business under s. 227.114, Stats.

Section 227.14(2g), Stats. requires proposed rules to include provisions detailing how the rules will be enforced. The great majority of rule revisions are contained within ch. NR 544, Wis. Adm. Code. Department enforcement of ch. NR 544 to assure approved recycling programs meet requirements is through a review process for responsible units in s. NR 544.11. If violations are found through this review, there is the possibility of imposing a probation, as detailed in s. NR 544.12, or further enforcement by terminating a responsible unit’s approved recycling program as set forth in s. NR 544.11(2)(c). These sections have been revised consistent with the overall changes in NR 544. Responsible units are required in ss. NR 544.04(9) and 544.06(2)(e) to provide a means through their local recycling ordinance of adequately enforcing the requirements of their effective recycling program, including penalties, citation authority and adequate inspection authority.

Enforcement for revisions contained within ch. NR 502 is authorized under applicable provisions of the solid waste codes. Enforcement could entail revoking of C&T licenses, or a requiring a facility to meet certain or all of the general requirements from which recycling facilities are currently exempted.

10. Anticipated Cost Incurred by Private Sector

Because the intent of proposed revisions is to clarify original intent, the private sector is not expected to incur additional costs over and beyond those resulting from current rules. The sole exception is the cost to waste tire processors to submit a plan of operation for approval by the Department, with an estimated cost of \$500. This requirement, previously required of waste tire processors, was inadvertently eliminated in 1995 as a result of rule changes involving a broad range of materials listed in s. 287.07 (3) and (4), Stats.

11. Effect on Small Businesses

None anticipated.

12. Agency Contact Person

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SECTION 1. NR 500.03(19) and (140) are amended to read:

NR 500.03(19) “Beneficial use” or “beneficial reuse” means the ~~recycling or use of~~ utilization of a solid waste or an industrial by-product in a productive use manner.

(140) “Materials recovery facility” has the meaning specified in s. ~~NR 544.03 (12)~~ 287.27 (1), Stats.

~~Note: Section NR 544.03 (12) defines “materials recovery facility” to mean “a facility where 2 or more of the materials specified in s. 287.07 (3) or (4), Stats., not mixed with other solid waste, are processed for reuse or recycling by conversion into a consumer product or a product which is used as a raw material in a commercial or industrial process. A materials recovery facility does not include a facility operated by a pulp or paper mill which utilizes source separated secondary fiber or paper for use as a raw material in a commercial product.”~~

SECTION 2. NR 500.03(140) (note) is created to read:

Note: The definition of a materials recovery facility, as given in s. 287.27(1), Stats., provides “In this section, ‘materials recovery facility’ means a facility where the materials specified in sub. (4) (b) or s. 287.07 (3) or (4), not mixed with other solid waste, are processed for reuse or recycling by conversion into a consumer product or a product which is used as a raw material in a commercial or industrial process. ‘Materials recovery facility’ does not include a facility operated by a pulp or paper mill which utilizes fiber or paper that has been separated from waste for use as a raw material in a commercial product.”

SECTION 3. NR 502.05 (3)(g) is amended to read:

NR 502.05(3)(g) Materials recovery facilities as defined in ~~s. NR 544.03 (12)~~ s. NR 500.03 (140). A materials recovery facility which serves one or more responsible units shall either hold a valid self-certification or be exempted from self-certification under s. NR 544.16 (2).

SECTION 4. NR 502.06(2)(ar) is amended to read:

NR 502.06(2)(ar) Services for the collection and transportation of materials listed in s. 287.07 (4) Stats., only from commercial, industrial and governmental operations that comply with general operational requirements listed in sub. (4)(e) and (em).

SECTION 5. NR 502.06(4)(e) is amended to read:

NR 502.06(4)(e) Services for the collection and transportation of recyclable materials listed in s. 287.07, Stats., and municipal solid wastes shall comply with the prohibitions on land disposal and incineration ~~in that section in s. 287.07, Stats.~~

SECTION 6. NR 502.06(4)(eg) and (er) are created to read:

NR 502.06(4)(eg) Services for the collection and transportation of municipal solid wastes shall notify their clients of the need to comply with state and local laws requiring recycling. In this paragraph, "client" means the contracting entity or the entity that arranges for service provision in the case where there is no formal contract.

1. Notification for all clients except households in single family and 2 to 4 unit dwellings shall be written, and provided at the time of entering into a contract or otherwise arranging for collection and transportation services and annually thereafter.

2. Notification for all clients in single family and 2 to 4 unit dwellings shall be provided either at the time a client first arranges for collection and transportation services or in writing within 45 days of that time, and by written notice annually thereafter.

3. The service provider shall maintain documentation of this notification for the preceding calendar year.

(er) Unless otherwise specified by contract, a service for the collection and transportation of recycled materials specified in s. NR 544.04 (3) and (4) shall, within 4 weeks of a written request from a responsible unit, provide information regarding the amount of recyclable materials collected under contract with the responsible unit.

SECTION 7. NR 502.07(2f) is amended to read:

NR 502.07(2f) EXEMPT RECYCLING TRANSFER FACILITIES. Facilities only for the transfer of items listed in s. 287.07 (3) or (4), Stats., ~~except waste tires listed in s. 287.07 (3) (j), Stats.,~~ shall comply with the operational requirements in sub. (7) (a), (c), (d), (i), (k) and (o), and the performance standards and closure requirements in s. NR 502.04 (1) and (3) (a) and (b), and, for new or expanded facilities opening after the effective date of this subsection ...[revisor insert date], the locational criteria in sub. (3), but are exempt from all other requirements of this chapter.

SECTION 8. NR 502.08 (2) (b) and (f) are amended to read:

NR 502.08(2)(b) Materials recovery facilities as defined in s. NR 500.03 (140). A materials recovery facility which serves one or more responsible units shall either hold a valid self-certification or be exempted from self-certification, as specified in s. NR 544.16 (2).

(f) Facilities for the processing of scrap iron, steel or nonferrous metal using large machines to produce a principal product of scrap metal for sale or use for remelting purposes ~~and facilities which use large machines to sort, grade, compact, bale or process clean, separate waste components consisting of waste paper, textiles, clean wood, glass, rubber, construction and demolition material, pavement or plastics, not mixed with each other or other solid waste, for sale or use recycling purposes.~~

SECTION 9. NR 502.08(2)(fg) and (fr) are created to read:

NR 502.08(2)(fg) Facilities that use large machines to sort, grade, compact, bale or process clean, separate waste components consisting of waste paper, textiles, clean wood, glass, pavement or plastics, not mixed with each other or other solid waste, for sale or distribution for reuse or recycling.

(fr) Facilities that use large machines to sort, grade, compact, bale, or mechanically process clean, separate waste construction and demolition materials not mixed with other solid waste, for sale or distribution for reuse or recycling, provided the facility complies with the operational requirements specified in s. NR 502.07 (7) (a), (c), (d), (k), (L) and (o), the performance standards and closure requirements in s. NR 502.04 (1) and (3) (a) and (b), and, for new or expanded facilities opening after the effective date of this subsection ...[revisor insert date], the locational criteria in s. NR 502.07(3).

SECTION 10. NR 544.01 is amended to read:

NR 544.01 Purpose. The purpose of this chapter is to establish criteria under s. 287.11, Stats., for determining whether a responsible unit's ~~or out of state unit's~~ program is an effective recycling program. In conjunction with s. 287.09 (2) (a), Stats., ~~his~~ this chapter will guide the development of effective recycling programs.

Note: Under s. 287.23 (3), Stats., only responsible units that have been determined to have effective recycling programs shall be eligible to receive state financial assistance for recycling ~~beginning in 1995~~. In addition, under s. 287.23 (7), Stats., only responsible units ~~and out of state units~~ having effective recycling programs under this chapter are exempt from the landfill and incinerator restrictions in s. 287.07 (3) and (4), Stats.

SECTION 11. NR 544.02 is amended to read:

NR 544.02 Applicability. The provisions of this chapter apply to all the following:

(1) Responsible units ~~or out of state units~~ seeking approval of ~~their solid waste management program~~ as an effective recycling program under s. 287.11, Stats.

(2) Responsible units ~~or out of state units~~ that have been approved ~~and responsible units or out of state units that~~ are on probation.

~~(3) The owners and operators of incinerators and landfills that accept waste from out of state.~~

SECTION 12. NR 544.03(1) is repealed.

SECTION 13. NR 544.03(2) is renumbered 544.03(1) and, as renumbered, is amended to read:

NR 544.03(1) “Bi-metal container” means a container for ~~carbonated or malt~~ beverages that is made primarily of a combination of steel and aluminum.

SECTION 14. NR 544.03(2) and (6m) are created to read:

NR 544.03(2) “Co-collection system” means a system for collecting recyclable materials from residential properties, that does not physically separate and maintain separation of solid waste from recyclable materials during collection and transportation, for processing and marketing. It includes curbside collection and drop-off collection.

(6m) “Designated agent” means any person who, on behalf of or by agreement with the owner or operator of a multi-family dwelling, a non-residential facility or property, provides goods or services at that location.

SECTION 15. NR 544.03(7) is amended to read:

NR 544.03(7) ~~“Drop-off Drop-off collection”~~ means a system for collecting recyclable materials in which the recyclable materials are taken by individuals to designated collection sites and deposited into designated containers from which the recyclable materials are transported for processing and marketing.

SECTION 16. NR 544.03(8) is repealed.

SECTION 17. NR 544.03(9) note and (10) note are created to read:

NR 544.03(9) Note: Plastic containers made of HDPE and regulated under ch. ATCP 137 will have a triangular symbol with number “2”.

(10) Note: Plastic containers made of LDPE and regulated under ch. ATCP 137 will have a triangular symbol with number “4”.

SECTION 18. NR 544.03(12) is amended to read:

NR 544.03(12) ~~“Materials recovery facility” means a facility where 2 or more of the materials specified in s. 287.07 (3) or (4), Stats., not mixed with other solid waste, are processed for reuse or recycling by conversion into a consumer product or a product which is used as a raw material in a commercial or industrial process. A materials recovery facility does not include a facility operated by a pulp or paper mill which utilizes source separated secondary fiber or paper for use as a raw material in a commercial product~~ has the meaning specified in s. 287.27 (1), Stats.

SECTION 19. NR 544.03(12) (note) is created to read:

Note: The definition of a materials recovery facility, as given in s. 287.27(1), Stats., provides “In this section, ‘materials recovery facility’ means a facility where the materials specified in sub. (4) (b) or s. 287.07 (3) or (4), not mixed with other solid waste, are processed for reuse or recycling by conversion into a consumer product or a product which is used as a raw material in a commercial or industrial process. ‘Materials recovery facility’ does not include a facility operated by a pulp or paper mill which utilizes fiber or paper that has been separated from waste for use as a raw material in a commercial product.”

SECTION 20. NR 544.03(12m) is created to read:

NR 544.03(12m) “Mixed waste” means municipal solid waste from which recyclable materials have not been separated for recycling.

SECTION 21. NR 544.03(16), (17) and (20) are repealed.

SECTION 22. NR 544.03(21) is amended to read:

NR 544.03(21) “Non-residential facilities and properties” means commercial, retail, industrial, institutional and governmental facilities and properties. ~~This term does not include multiple family dwellings.~~ It includes any location at which goods or services are provided or manufactured, including locations under construction, demolition or remodeling, or used for special events such as, but not limited to, fairs, festivals, sport venues, conferences and exhibits.

SECTION 23. NR 544.03(24) and (25) are repealed.

SECTION 24. NR 544.03(27) note, (27m), (28) note, (28m) and (29) note are created to read:

NR 544.03(27) Note: Plastic containers made of PETE and regulated under ch. ATCP 137 will have a triangular symbol with number “1”.

(27m) “Plastic container” means a rigid plastic container including those made of PETE (#1), HDPE (#2), PVC (#3), LDPE (#4), PP (#5), PS (#6), and other resins or multiple resins (#7).

(28) Note: Plastic containers made of PP and regulated under ch. ATCP 137 will have a triangular symbol with number “5”.

(28m) “PS” means polystyrene.

Note: Plastic containers made of PS and regulated under ch. ATCP 137 will have a triangular symbol with number “6”.

(29) Note: Plastic containers made of PVC and regulated under ch. ATCP 137 will have a triangular symbol with number “3”.

SECTION 25. NR 544.03(31) is repealed.

SECTION 26. NR 544.03(31g), (31r) and (33m) are created to read:

NR 544.03(31g) “Processing” means baling, shredding, pulverizing, composting, separating or otherwise treating or altering by some means to facilitate the further transport, recycling or reuse of solid waste intended to be recycled or reused.

(31r) “Processing facility” has the meaning specified in s. NR 500.03(181), but does not include facilities where combustion of solid waste occurs.

(33m) “Recycling” means the series of activities by which solid waste is collected, sorted, processed and converted into raw materials and used in the production of new materials. It excludes the use of these materials as a fuel substitute or for energy production.

SECTION 27. NR 544.03(37) and (39) are amended to read:

NR 544.03(37) “Reuse” means using a product more than once in its same form for the same ~~purpose~~ or other productive purposes.

(39) “Single ~~material commodity materials~~ recovery facility” means a facility where only one of the materials specified in s. 287.07 (3) and (4), Stats., not mixed with other solid waste is processed for reuse or recycling by conversion into a consumer product or a product which is used as a raw material in a commercial or industrial process.

SECTION 28. NR 544.03(39g) is created to read:

NR 544.03(39g) “Single-stream collection” means a system for co-mingled collection of recyclable fibers, containers or other recyclable materials in which these materials are separated from solid waste at the point of collection and are transported to a processing facility to be sorted into marketable commodities.

SECTION 29. NR 544.03(40) is repealed.

SECTION 30. NR 544.03(41) is amended to read:

NR 544.03(41) “Waste reduction” means decreasing the quantity of waste materials or products ~~that are generated as waste~~.

SECTION 31. NR 544.04(intro.) and (1) are amended to read:

NR 544.04 Required components of an effective recycling program. (intro.) The effective recycling program of a responsible unit ~~or out of state unit~~ shall include all of the following components:

(1) A public information and education program to address recycling of materials specified in s. 287.07 (1m) to (4), Stats., and waste reduction and reuse efforts at single family and 2 to 4 unit residences, multiple-family dwellings and non-residential facilities and properties. It shall include program start up and ~~continuing~~ regular distribution of current program information, and consumer and youth education.

Note: Major appliances must be managed in compliance with ~~s.~~ ss. 285.59 and 287.07(1m), Stats., and ch. NR 488.

SECTION 32. NR 544.04(6) is repealed.

SECTION 33. NR 544.04(7) is amended to read:

NR 544.04(7) A requirement that owners of multiple family dwellings and non-residential facilities and properties or their designated agents provide for the recycling at their facilities and properties of materials specified in s. 287.07 (3) and (4), Stats., ~~as required by the recycling ordinance under s. NR 544.06.~~

SECTION 34. NR 544.04(9g) and (9r) are created to read:

NR 544.04(9g) Beginning on the 1st day of the 13th month beginning after the effective day of this rule ... [revisor insert date], a compliance assurance plan describing the procedure the responsible unit will follow to address at a minimum one act of non-compliance with recycling requirements specified in its recycling ordinance which is commonly encountered by the responsible unit.

(9r) Submittal of an annual program report that meets the requirements specified in s. NR 544.10.

SECTION 35. NR 544.04(10) is amended to read:

NR 544.04(10) Provisions for the management of the postconsumer waste that is generated within the responsible unit ~~or out of state unit~~ and that is not separated or recovered for recycling in a manner consistent with the highest feasible solid waste management priority under s. 287.05 (12), Stats.

SECTION 36. NR 544.05(1)(a), (b) and (c), (2) and (3) are amended to read:

NR 544.05 Collection and processing systems. (1)(a) *General requirements.* ~~Beginning in 1997, meet~~ Meet the total collection standards standard in Table 1, except that a multiple-municipality responsible unit with a membership of rural and other municipalities may meet a prorated standard for each material by the entire responsible unit.

(b)(title) *Collection systems in urban municipalities of 5,000 or greater.* A municipality with a population of 5,000 or greater with an aggregate population density of at least 70 persons per square mile shall provide, ~~contract for provision of, or otherwise provide for,~~ a system for collection of the materials specified in s. 287.07 (3) and (4), Stats., from each single family residence and 2 to 4 unit residence. The collection system shall meet the requirements of either subd. 1. or 2.

1. a. Curbside collection at least monthly of newspaper, glass containers, aluminum containers, steel containers, PETE plastic containers, HDPE plastic containers, and either corrugated paper and other container board, or magazines.

b. Curbside or ~~drop-off~~ drop-off collection of bi-metal containers; PVC plastic containers, LDPE plastic containers, PP plastic containers, polystyrene plastic containers, foam polystyrene packaging, waste tires, and corrugated paper and other container board, or magazines not collected under subd. 1. a.

2. A ~~drop-off~~ drop-off collection system ~~which achieves both of the following: that~~

a. ~~Collection results of at least 90% of the standards for the municipality in Table 1 for the 6 month period prior to submitting an application for program approval and for subsequent calendar years through 1996, and 100% of the standards thereafter.~~

b. ~~Utilization of the drop-off collection system is utilized~~ by at least 80% of the single family and 2 to 4 unit residences in the municipality as documented by drop-off site monitoring records.

3. Each municipality ~~which that~~ utilizes a ~~drop-off~~ drop-off collection system shall ensure that the size of the collection facility and hours of operation are adequate to meet the needs of the residents to recycle the materials specified. The site shall be open at least 2 days each month for a minimum of 5 hours each day, unless demonstrated by the municipality that fewer hours adequately meet the needs of the residents.

(c)(title) *Collection systems in rural municipalities under 5,000.* A municipality with a population under 5,000 or an aggregate population density of less than 70 persons per square mile, shall provide to each single family and 2 to 4 unit residence either curbside or ~~drop-off~~ drop-off collection service or a combination for the materials specified in s. 287.07 (3) and (4), Stats. A municipality which provides ~~drop-off~~ drop-off collection service shall ensure that the size of the facility and its hours of operation are adequate to meet the needs of single family and 2 to 4 unit residences to recycle the materials specified. The site shall be open at least 2 days each month for a minimum of 5 hours each day, unless demonstrated by the municipality that fewer hours adequately meet the needs of the residents.

(2) PROCESSING SYSTEMS. (a) Processing systems utilized as part of an effective recycling program shall produce materials or products of marketable quality.

(b) Except as provided in sub. (3), a responsible unit ~~or out of state unit~~ shall use ~~one or both of the following processing systems~~ as part of its effective recycling program:

~~1. A one or more materials recovery facility which has facilities that are self-certified under s. NR 544.16.~~

~~2. One or more single material recovery facilities.~~

(3) ALTERNATIVE COLLECTION AND PROCESSING SYSTEMS. (a) A responsible unit ~~or out of state unit~~ may apply to the department under s. NR 544.08 (3) for approval of an alternative collection system that does not comply with the requirements under sub. (1) (a) 1. and 2., and either par. (b) and or (c).

(b) A responsible unit ~~or out of state unit~~ may apply to the department under ss. NR 502.08 and 544.08 (3) for approval of an alternative processing system that does not comply with the requirements under sub. (2) (b).

Note: ~~Mixed waste processing and co-collection systems will apply for approval under this section. Examples of alternative processing and collection systems which may be approved under this paragraph include, but are not limited to, mixed waste processing and co-collection systems.~~

(c) Single stream collection systems that use a materials recovery facility that is self-certified under s. NR. 544.16 shall qualify as acceptable collection systems under this subsection and do not require approval for alternative collection systems.

SECTION 37. NR 544.06(1) and (2)(b)2. are amended to read:

NR 544.06 (1) A responsible unit ~~or out of state unit~~ seeking approval under this chapter shall adopt and enforce a recycling ordinance meeting the requirements of this section, except that a multiple-municipality responsible unit is not required to adopt an ordinance for any of its members which have and enforce their own ordinances under this section. No unit of government in a multiple-municipality responsible unit other than the responsible unit may be required to adopt or enforce an ordinance under this section.

Note: A responsible unit is authorized by s. 287.09 (3) (b), Stats., to adopt an ordinance to enforce the recycling ~~or other~~ program established ~~in compliance~~ under s. 287.09(2)(a), Stats., to comply with s. 287.07 (1m) to (4), Stats., and the priorities under s. 287.05 (12), Stats.

(2)(b)2. Notify tenants in writing at the time of renting or leasing the dwelling and at least semi-annually thereafter ~~about the programs under this section~~ of how to appropriately recycle the materials specified under s. 287.07 (1m) to (4), Stats., at this location. This notification shall include reasons to reduce and recycle waste, which materials are collected, how to prepare recyclable materials in order to meet the processing requirements, and collection methods or sites. The notification shall indicate locations and hours of operation of drop-off collection sites for recyclable materials not collected on-site, including a contact person or company, address and phone number.

SECTION 38. NR 544.06(2)(b)4. is repealed.

SECTION 39. NR 544.06(2)(c)2. is amended to read:

NR 544.06(2)(c)2. Notify in writing, at least semi-annually, all users, tenants and occupants of the properties ~~about the programs under this section~~ of how to appropriately recycle the materials specified under s. 287.07 (1m) to (4), Stats., at this location. This notification shall include reasons to reduce and recycle waste, which materials are collected, how to prepare recyclable materials in order to meet the processing requirements, and collection methods or sites. The notification shall indicate locations and hours of operation of drop-off collection sites for recyclable materials not collected on-site, including a contact person or company, address and phone number.

SECTION 40. NR 544.06(2)(c)4. is repealed.

SECTION 41. NR 544.07 is amended to read:

NR 544.07 Record-keeping requirements. A responsible unit ~~or out of state unit~~ subject to this chapter shall maintain records supporting its application and documenting its compliance with this chapter. The records shall be kept at a single location and be available for department review. The responsible unit ~~or out of state unit~~ shall retain its records for at least 3 years following the submittal of that year's program report.

SECTION 42. NR 544.08(title), (1), (2)(intro.), (c) and (g) are amended read:

NR 544.08 (title) Application for initial program or alternative collection or processing system approval. (1) APPLICATION. A responsible unit ~~or out of state unit~~ seeking an initial determination that its program is an effective recycling program or the approval of an alternative collection or processing system under this chapter shall apply to the department under this section. For all measurements, a responsible unit ~~or out of state unit~~ shall use sampling methods or measurements specified by the department. ~~Applications shall be submitted by April 1, 1994, to be considered for initial approval for 1995, and by April 1 for initial approval in subsequent years.~~ Applications shall be submitted on ~~forms~~ a form supplied by the department.

Note: This form, or specific data formats for electronic submittal of the form, may be obtained from the Department of Natural Resources, Bureau of Waste Management at 101 S. Webster St., P.O. Box 7921, Madison, WI 53707.

(2) CONTENTS OF APPLICATION FOR INITIAL PROGRAM APPROVAL. The application for initial program approval shall provide all of the following information on the current status of the recycling program and the program that will be in effect by 1995 as follows:

(c) A description of the collection system for single-family residences and 2 to 4 family residential dwellings units. A responsible unit shall also apply for approval of an alternative collection or processing system under sub. (3) if the collection system is not consistent with the requirements under s. NR 544.05 (1) (a) 1. and 2., and either par. (b) or (c).

(g) A description of its system of enforcement and, beginning on the 1st day of the 13th month beginning after the effective date of this paragraph ... [revisor insert date], a copy of its compliance assurance plan as required in s. NR 544.04(9g).

SECTION 43. NR 544.08(2)(h) is repealed.

SECTION 44. NR 544.08(2)(k), (m), (3)(intro.) and (c) are amended to read:

NR 544.08(2)(k) A description of provisions for the management of solid waste that is generated in the responsible unit ~~or out of state unit~~ and that is not separated or recovered for recycling, and whether that waste is managed in a manner consistent with the highest feasible solid waste management priority under s. 287.05 (12), Stats.

(m) The ~~name~~ names of the all materials recovery facility facilities that accept recyclable materials collected from the responsible unit, if a ~~materials recovery facility~~ these are included as a component of the effective recycling program.

~~(3)~~(intro.) A responsible unit ~~or out of state unit~~ that is seeking approval of an alternative to the systems specified in s. NR 544.05 (1) and (2) shall submit to the department the information required in sub. (2) and the following information ~~by April 1, 1994, to be considered for initial approval for 1995, or by April 1 for initial approval in any subsequent year:~~

(c) A demonstration that the proposed alternative systems will meet the total collection standards standard specified in Table 1.

SECTION 45. NR 544.09 is amended to read:

NR 544.09 (title) Initial program or alternative collection or processing system approval process.

Upon receipt of a complete application ~~for program approval~~, the department shall either approve or disapprove the application in writing within 90 days. The determination of the department shall be based upon compliance with this chapter. An approval may be conditioned upon any requirements necessary to comply with this chapter.

~~(1)~~ (title) APPROVAL OF ~~INITIAL APPLICATION~~. The department shall approve a responsible unit's ~~or out of state unit's recycling program application~~ if the ~~program meets the following are met:~~

(a) ~~The~~ For initial program approval, the program includes the components required under s. NR 544.04.

(b) The ~~program application~~ includes the elements required under s. NR 544.08.

(c) The program is projected to meet, ~~beginning in 1997, the total collection standards standard~~ in Table 1.

~~(d) The out of state unit's program complies with s. NR 544.15.~~

~~(2)~~(title) DENIAL OF ~~INITIAL APPLICATION FOR APPROVAL~~. The department may deny a responsible unit's ~~or out of state unit's~~ application for ~~initial~~ approval for any of the following reasons:

~~(b)~~(a) ~~Absence~~ For initial program approval, absence of a program component under s. NR 544.04.

~~(a)~~(b) Failure to submit a complete application under s. NR 544.08.

(c) Failure to demonstrate that the program is likely to achieve the total collection standards standard in Table 1 ~~by 1997~~.

(d) Failure to comply with any provision of this chapter.

SECTION 46. NR 544.10(1), (2)(d) and (i) are amended to read:

NR 544.10(1) REPORT. A responsible unit ~~or out of state unit~~ with an approved effective recycling program shall submit a report to the department under this section by April 30 of each year, ~~beginning in 1995~~. For all measurements, a responsible unit ~~or out of state unit~~ shall use sampling methods or measurements specified by the department. The report shall demonstrate to the satisfaction of the department that the recycling program meets the requirements of this chapter and any conditions of the approved program. Reports shall be submitted on a form supplied by the department.

Note: This form, or specific data formats for electronic submittal of the form, may be obtained from the Department of Natural Resources, Bureau of Waste Management at 101 S. Webster St., P.O. Box 7921, Madison, WI 53707.

(2) (d) For each year, a report on the following:

~~1-~~ The tonnage collected of each material listed in Table 1 ~~for each municipality~~, except that a multiple-municipality responsible unit, with a combination of rural and other municipalities, may meet a prorated standard for each material for the entire responsible unit. If the tonnage collected does not meet the ~~standards total standard~~ in Table 1, the report shall include an explanation for the failure to meet ~~those standards~~ that standard and a proposal for improving collection in the following year.

~~2- If the responsible unit or out of state unit does not have a volume based fee system under s. NR 544.04 (6), the tonnage of solid waste collected within the region by the responsible unit or by any person under contract with the responsible unit.~~

(i) A description of provisions for the management of solid waste that is generated in the responsible unit's ~~or out of state unit's~~ region and that is not separated or recovered for recycling and whether that solid waste is managed in a manner consistent with the highest feasible solid waste management priority under s. 287.05 (12), Stats.

SECTION 47. NR 544.11 is amended to read:

NR 544.11 Annual program report review process. (1) The department shall review the annual program report of the responsible unit ~~or out of state unit~~ for the following:

- (a) Compliance with the conditions of effective recycling program approval.
- (b) Compliance with the requirements of this chapter.

(2) If the department finds that the responsible unit ~~or out of state unit~~ does not meet the requirements of sub. (1) (a) or (b), the department may take any of the following actions:

(a) Modify or condition the approval if the responsible unit ~~or out of state unit~~ has had minor problems in maintaining its effective recycling program in compliance with its program approval and the requirements of this chapter.

(b) Place the program on probation for no more than one year if the department determines that the responsible unit ~~or out of state unit~~ has had significant problems in maintaining its effective recycling program in compliance with its program approval or the requirements of this chapter and if it appears that compliance may be achieved within one year. A responsible unit ~~or out of state unit~~ under probation shall comply with s. NR 544.12.

(c) Terminate the program approval if the department determines that the responsible unit ~~or out of state unit~~ has had significant problems in maintaining its effective recycling program in compliance with its program approval or the requirements of this chapter and if it does not appear that compliance may be achieved within one year or for failure to satisfy the terms of its probationary approval.

(d) Grant an exemption from ~~a the total~~ collection standard in Table 1 if the responsible unit ~~or out of state unit~~ provides adequate justification for failure to meet the collection standard and demonstrates that a reasonable effort was made to meet the standard.

Note: The department intends to conduct program audits of at least ~~20%~~ 10% of all responsible units' programs each year.

SECTION 48. NR 544.12 is amended to read:

NR 544.12 Programs under probation. (1) A responsible unit ~~or out of state unit which~~ that has ~~received a probationary approval of its recycling~~ been placed on probation under s. NR 544.11 (2) (b) has an effective recycling program for the purposes of ss. 287.07 (7) and 287.23, Stats. ~~A The probationary approval period~~ may not exceed one year.

(2) A responsible unit ~~or out of state unit which~~ has received a probationary ~~that has been placed on~~ probation under s. NR 544.11 (2) (b) shall submit a plan to the department describing the actions it intends to take to meet the requirements of this chapter. The department shall review this plan and may ~~attach~~ require conditions ~~to~~ in its approval. A responsible unit's ~~or out of state unit's~~ recycling program shall be monitored by the department to ensure compliance with the probationary plan.

SECTION 49. NR 544.13 is amended to read:

NR 544.13 (title) Responsible units ~~and out of state units~~ located in current service areas of facilities exempt under s. 287.07 (7) (b), Stats. A responsible unit ~~or out of state unit~~ that is located in the current service area of an operating solid waste treatment facility which is exempt under s. 287.07 (7) (b), Stats., and that uses that solid waste treatment facility, may be approved as an effective recycling program under this chapter if it meets all of the following requirements:

(1) It establishes a recycling program for aluminum, glass, steel and bi-metal containers.

(2) It provides for curbside collection of the non-combustible materials listed in sub. (1) in municipalities that have a population of 5,000 or greater with an aggregate population density of at least 70 persons per square mile.

SECTION 50. NR 544.14 is amended to read:

NR 544.14 Variances and exemptions. (1) GENERAL. A responsible unit ~~or an out of state unit~~ with an effective recycling program may request in writing a variance or the department may on its own initiative grant a variance to the requirements of s. 287.11 (2) (b) and (er), Stats., for up to one year.

(2) VARIANCES REQUESTED BY THE RESPONSIBLE UNIT. A responsible unit ~~or an out of state unit~~ with an effective recycling program may request a variance for up to one year to the requirements in s. 287.11 (2) (b) and (er), Stats., for a material identified in s. 287.07 (3) or (4), Stats., that is generated in the responsible unit's ~~or out of state's~~ region. The department shall grant a variance if it determines that the cost of selling processed material as defined in s. 287.11 (2m) (a) 2., Stats., exceeds any of the following:

(a) Forty dollars per ton of processed material, as annually adjusted by the department to reflect changes in price levels due to inflation since 1989.

(b) The cost of disposing of processed material.

(3) VARIANCES INITIATED BY THE DEPARTMENT. The department may, on its own initiative, grant to one or more responsible units ~~or out of state units~~ with effective recycling programs a variance to the requirements in s. 287.11 (2) (b) and (er), Stats., for up to one year for a material identified in s. 287.07 (3) or (4), Stats., that is generated in the responsible unit's ~~or out of state unit's~~ region if the department determines that the cost of selling processed material exceeds the amount under sub. (2) (a) or (b).

(b) The department may grant a responsible unit ~~or out of state unit~~ a variance to a requirement in s. 287.11 (2) (b) or (er), Stats., for up to one year for a material identified in s. 287.07 (3) or (4), Stats., in the event of an unexpected emergency.

(4) EXEMPTIONS. The department may grant exemptions from nonstatutory requirements of this chapter upon request of the responsible unit ~~or out of state unit~~ when the department determines that an exemption is needed to allow or encourage the management of solid waste in accordance with s. 287.05, Stats., and where the exemption will be consistent with the intent of this chapter. Before granting an exemption, the department shall take into account factors such as good cause, circumstances beyond the control of the responsible unit or out-of-state unit and financial hardship. When the circumstances for which the exemption was granted are no longer valid, the department shall rescind the exemption and revise the effective recycling program approval.

SECTION 51. NR 544.15 is repealed:

SECTION 52. NR 544.16 is repealed and recreated to read.

NR 544.16 Materials recovery facilities used as part of an effective recycling program. (1) GENERAL REQUIREMENTS. The owner or operator of a materials recovery facility that serves as a component of a responsible unit's effective recycling program shall do all of the following:

(a) Operate and maintain the facility in a nuisance-free and environmentally sound manner.

(b) Maintain records to verify that not less than 75% of the volume of recyclable materials accepted were recycled or transported from the facility within 12 months of receipt at the facility, unless otherwise approved by the department.

(c) Maintain recyclable materials in marketable condition.

(2) SELF-CERTIFICATION REQUIRED. (a) Unless exempt under par. (b), the owner or operator of a materials recovery facility that serves as a component of a responsible unit's effective recycling program shall certify to the department that it meets the requirements of subs. (3) to (8).

(b) Single commodity materials recovery facilities are exempted from the self-certification requirements unless the department determines that self-certification is necessary to ensure compliance with the requirements in sub. (1). A self-certification determination shall be effective for a period of one year.

(3) SELF-CERTIFICATION OF OPERATION. (a) The owner or operator of a materials recovery facility shall submit a self-certification for operation prior to first accepting recyclable materials from any responsible unit. The owner or operator shall submit all of the following information to the department on a form supplied by the department:

Note: This form, or specific data formats for electronic submittal of the form, may be obtained from the Department of Natural Resources, Bureau of Waste Management at 101 S. Webster St., P.O. Box 7921, Madison, WI 53707.

1. The name of the owner and operator, and corresponding mailing addresses and telephone numbers.

2. The legal name of the materials recovery facility and the street address and telephone number at that location.
3. A description of the materials recovery operations and the days and hours during which services are provided.
4. A list of all responsible units that use the materials recovery facility.
5. A list of all recyclable materials accepted at the materials recovery facility.
6. A statement describing whether incoming recyclable materials are received pre-sorted into individual commodities or commodity groups, or collected in a single-stream or other alternative collection system.
7. The covered storage capacity for recyclable materials.
8. The exposed storage capacity for recyclable materials, the types and maximum quantities of recyclable materials to be stored outdoors at any time, and the procedures used to prevent discharge of contaminants to the environment from these materials.
9. Certification that the storage capacity is adequate to maintain the quality and quantity of the recyclable materials for markets.
10. The processing capacity of the materials recovery facility for recyclable materials.
11. Certification that the processing capacity of the materials recovery facility is adequate to accommodate the anticipated quantities of recyclable materials that will be received.
12. A description of the procedures used to prevent nuisance conditions at the materials recovery facility.
13. Information on the total quantity of residual material generated at the materials recovery facility during the previous calendar year and the percentage of the total amount of incoming recyclable materials that was residual material during the previous calendar year.
14. The procedures used to minimize residual material.
15. Certification that the materials recovery facility produces recovered recyclable materials in accordance with market quality specifications.
16. Certification that the owner or operator of the materials recovery facility maintains accurate records to document the types and quantities of recyclable materials processed and marketed for all responsible units using the facility and that those records will be made available for inspection upon request by the department.
17. Certification that the owner or operator of the materials recovery facility will provide by February 1 of each year sufficient information so that a responsible unit can comply with the reporting requirements under s. NR 544.10 (2) (d) 1. For all measurements, the owner or operator of the materials recovery facility shall use sampling methods or measurements acceptable to the department.
18. Certification that recyclable materials will not be stored in wetlands as defined in s. NR 500.03(258).
19. Certification that recyclable materials will not be stored in a floodplain as defined in s. NR 500.03(87). This paragraph does not apply to a materials recovery facility at which recyclable materials were stored in a

floodplain on or before November 1, 1992, provided that the area in which the recyclable materials are stored is not increased.

20. Certification that the owner or operator of the materials recovery facility will comply with the disposal and incineration prohibitions under s. 287.07 (1m) to (4), Stats.

(b) Records shall be maintained at the site documenting the information required in this subsection for a period of at least 3 years.

(4) SELF-CERTIFICATION OF OPERATION RENEWAL AND REPORT. The owner or operator of a self-certified materials recovery facility shall submit a self-certification renewal and report by March 30 of each year, in a form supplied by the department, that shall contain all of the following:

(a) Certification that the facility has been and will continue to be maintained and operated in conformance with the information submitted upon initial self-certification or upon subsequent notification of change to the department.

(b) An inventory of recyclable materials, by category and expressed in tons, accepted from responsible units as of both January 1 and December 31 of the previous calendar year, and the total tonnage of this material processed off-site in the previous calendar year. 15.

(c) Certification by the owner or operator of the materials recovery facility that not less than 75% of the volume of recyclable materials accepted were recycled or transported from the facility within 12 months of receipt at the facility, unless otherwise approved by the department. This requirement need not be met for the first year of operation of newly established materials recovery facilities.

(d) The total quantity expressed in tons, of residual material generated at the materials recovery facility during the previous calendar year and the percentage of the total amount of incoming recyclable materials that was residual material during the previous calendar year.

(5) INVALIDATION OF SELF-CERTIFICATION OF OPERATION. The department shall use the information provided under this section during routine inspection of materials recovery facilities and as needed in response to complaints. Should significant discrepancies between actual operations and information submitted under this section be found, the department may invalidate the materials recovery facility's self-certification and thereby disqualify the materials recovery facility as a component of a responsible unit's effective recycling program. The department may invalidate a materials recovery facility's self-certification if any of the following conditions exist:

(a) A failure to submit on a timely basis or knowingly falsifying the information required in sub. (3) or (4) for self-certification and self-certification renewal.

(b) Storage of recyclable materials in wetlands as defined in s. NR 500.03(258).

(c) Storage of recyclable materials in a floodplain as defined in s. NR 500.03(87), unless the recyclable materials were stored in the floodplain on or before November 1, 1992, and the area in which the storage occurs has not been increased.

(d) Storage of recyclable materials outdoors in a manner that renders them unmarketable.

(e) Failure to provide specific information to a responsible unit that has contracted directly with the materials recovery facility and whose recyclable materials were processed by ~~the materials recovery~~ that facility in the current year or in the previous calendar year. The information shall be requested by the responsible unit and provided to the responsible unit within 4 weeks of the documented date of request, and shall contain accurate information reflecting the weights of each recyclable material processed for the responsible unit.

(f) Failure to operate the materials recovery facility in a nuisance-free and environmentally sound manner.

(g) Failure to operate the materials recovery facility in accordance with the self-certification or other representations provided by the owner or operator under this section.

(6) The owner or operator of a materials recovery facility with an invalidated self-certification under sub. (5) may resubmit the self-certification information required under sub. (3) to the department and request a review after correcting all deficiencies. The department may re-certify a materials recovery facility if it determines that the materials recovery facility is in compliance and has put in place appropriate polices and procedures to remain in compliance with the requirements of this section.

(7) The department shall maintain a list of materials recovery facilities that are self-certified under this section.

(8) The owner or operator of a materials recovery facility which is self-certified under this section shall provide written notification to the department and responsible units that have contracted directly with the facility for services as follows:

(a) At least 60 days prior to closing the materials recovery facility, or an anticipated interruption of service to a responsible unit for a period of more than one week.

(b) At least 60 days prior to moving the materials recovery facility to a different location.

(c) At least 60 days prior to initiating processing of recyclable materials collected in a single-stream collection system.

(d) As soon as practicable after the occurrence of an unanticipated interruption of service to a responsible unit for a period of more than one week.

SECTION 53. NR 544.17 is repealed:

SECTION 54. Chapter NR 544 Table 1 notes are amended to read.

Note: 1) Rural municipalities are those with a population of 5,000 or less or a permanent aggregate population density of less than 70 persons per square mile or fewer. For purposes of ch. NR 544, municipalities that do not meet that population criterion fall into the other category. 2) The department intends to periodically revise these collection standards as conditions warrant.

SECTION 55. Chapter NR 545 is repealed.

SECTION 56. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 57. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 22, 2005.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)